CIVIL WRIT JURISDICTION CASE No.3160 OF 1991

CHANDESHWAR RAI, Son of late Deo Sharan Rai, resident of village Kansdara Balua, P.O. Kansdara, P.S. Chapra, Muffassil, District – Saran.

----------(Petitioner)

Versus

1. The State of Bihar
2. The Additional Member Board of Revenue, Bihar, Patna.
3. The Additional Collector, Saran, Chapra.
4. Deputy Collector, Land Reforms, Chapra, Saran.
5. (I) Devanti Kuer W/o – late Sudarshan Sah
   (II) Rama Shankar Sah
   (III) Amar Nath Sah
   (IV) Ram Naresh Sah
   Three sons of late Sudarshan Sah.
6. Prabhunath Sah

----------(Respondents)

For The Petitioner : M.K.SINHA
For The Respondent :(SC8)

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P R E S E N T

THE HON'BLE MR. JUSTICE AJAY KUMAR TRIPATHI

A. K. Tripathi, J. Heard learned counsel for the petitioner and learned counsel for the State.

This is the third attempt of the petitioner to overcome the two decisions which has gone against him in a case related to preemption of piece and parcel of land. A case was filed by respondent no. 5 before the Court of Deputy Collector, Chapra. The case was originally initiated at the behest of respondent no. 5 who filed a petition for preemption under section 16(3) of the Bihar Land Ceiling Act, claiming that he was adjoining

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raiyat of piece and parcel of land which was sought to be alienated by his father by a sale deed executed in the year 1987.

Contention of respondent no.5 before the court below was that he had separated from his father way back in the year 1985 and he was a raiyat in his own right holding the land in question allotted to his share. Subsequently in the year 1987 before the demise of his father he sold the piece and parcel of land to the present petitioner. He keeping in mind the family property as well as the object of keeping the land holdings together he exercised his right under the statute for preemption.

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The matter was heard, evidence was led which was documentary in nature. The assertion of private respondent no. 5 with regard to his being the adjoining raiyat in his right, despite being a son was accepted and his claim of preemption was allowed vide Annexure - 1.

The petitioner aggrieved by the order thereafter filed an appeal. The appeal was also heard in detail and the findings rendered by the original court in favour of private respondent was not interfered with because no error was found by the appellate court in the finding. Nothing substantial was brought on record to dislodge the findings as would be evident from Annexure – 2 to the writ application. The petitioner, therefore, filed a revision

application before the Member, Board of Revenue. The Additional Member, Board of Revenue vide his order dated 17.01.1990, despite exercising revisional power seems to have gone into the dispute in detail as would be evident from perusal of Annexure – 3 in this regard. Hereto the petitioner failed in establishing his case that the private respondent did not have a right of preemption and he was not the adjoining raiyat, merely because he was the son of the vendor who was his father.

A finding has been noted even by the Additional Member, Board of Revenue that in the sale deed executed by the father in favour of the petitioner, the boundary with regard to southern portion of land had shown the name of the private respondent no. 5. It has been categorically noted by the Additional Member, Board of Revenue, that if the assertion of the petitioner that the respondent no. 5 was a co-sharer as his father was the Karta, then there would have been no occasion to show his name on the boundary separately, instead of the father's name figuring in the boundary.

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Be that as it may, with the concurrent findings which has been recorded in favour of the respondent no.5 by all the courts below and there is nothing to show that the findings are erroneous either on question of law or the reasoning recorded by the court below, this Court

is not inclined to entertain the matter afresh and adjudicate on the issue afresh merely because the dispute which has already been settled by the three forums is not to the liking of the petitioner.

The writ application has no merit, it is dismissed.

Patna High Court
The 18th Day of
November, 2008
NAFR/ARF,
Rajeev/

(Ajay Kumar Tripathi, J.)

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